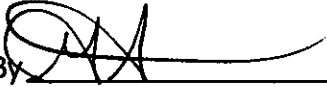


FILED

January 25, 2012

DEPARTMENT OF REAL ESTATE

By  _____

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of
DAVID STEVEN AYERDI,
Respondent.

DRE No. H-11083 SF
OAH No. 2011040307

DECISION AFTER REJECTION

This matter came on for hearing before Hannah H. Rose, Administrative Law Judge, Office of Administrative Hearings, in Oakland, California, on July 14, 2011.

Richard K. Uno, Counsel, represented the complainant. Respondent, David Steven Ayerdi, appeared in person and was represented by Edgardo Gonzalez, Esq.

Evidence was received, the record was closed, and the matter was submitted.

On August 12, 2011, the Administrative Law Judge rendered a Proposed Decision which the Acting Real Estate Commissioner declined to adopt as her Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, respondent was served with notice of the Acting Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case

1 would be decided by the Acting Real Estate Commissioner upon the record, the transcript of
2 proceedings held on July 14, 2011, and upon written argument offered by respondent David
3 Steven Ayerdi (respondent) and complainant.

4 Written argument was timely submitted by respondent on November 8, 2011.

5 Written argument has been submitted on behalf of complainant.

6 I have given careful consideration to the record in this case, including the
7 transcript of proceedings of July 14, 2011, and written argument offered by respondent and
8 complainant.
9

10 The following shall constitute the Decision of the Real Estate Commissioner in
11 these proceedings.

12 FACTUAL FINDINGS

13 1. Complainant made and filed the Statement of Issues in his official
14 capacity.
15

16 2. On March 1, 2010, the Department of Real Estate (Department) received
17 respondent's application for a real estate salesperson license. Pursuant to the Statement of
18 Issues, complainant contends that respondent's application should be denied based on
19 respondent's three felony convictions and two prior administrative decisions, described in
20 Factual Findings 3 through 7 below.
21

22 *Respondent's Convictions*

23 3. On May 24, 2001, in the United States District Court for the Northern
24 District of California, in Case Number CR-00-0247 MMC, respondent, on a plea of guilty, was
25 convicted of violating 18 United States Code (U.S.C.) section 201(b)(2)(B) (bribery of a public
26 official/employee), 18 U.S.C. section 1546(a) (visa fraud), and 18 U.S.C. section 641 (theft of
27

1 public property), all felonies. Respondent was committed to the custody of the United States
2 Bureau of Prisons for a prison term of 12 months and one day on all counts to run concurrently.
3 After two months in prison, the court recommended that respondent be placed in a "community
4 confinement facility" to complete the term of imprisonment. Respondent was placed on 36
5 months of supervised release (probation) following his release from custody, and was ordered
6 to pay a special assessment of \$300. Respondent paid the assessment, and after 24 months of
7 probation, respondent obtained an early termination of probation in 2004.
8

9 4. The circumstances underlying respondent's convictions are described in
10 the indictment issued by the grand jury in respondent's case. In pertinent part, the indictment
11 states:

12 On or about March 27, 2000, through March 29, 2000, in the Northern District
13 of California.. . [respondent], an immigration inspector of the United States
14 Immigration and Naturalization Service (INS), a public official, did corruptly
15 accept and agree to accept personally a thing of value from another in return for
16 being influenced to collude in and allow a fraud. . . on the United States by
17 providing INS stamps, ink, and other material to assist in the fraudulent
18 manufacturing and use of false entry and visa documents.... On or about March
19 29, 2000... [respondent] did knowingly attempt to use.. . falsely made visas,
20 alien registration receipt cards, and entry documents... [And on] or about March
21 29, 2000. .. [respondent] did knowingly and intentionally embezzle, steal,
22 purloin and convert to his own use and the use of another, property of the United
23 States of a value greater than \$1,000, namely stamps, ink, and information,
24 useful to manufacture fraudulent visas and other entry documents....
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1
2 5. The convictions arose out of respondent's employment with the INS. In
3 1992, respondent started employment with the INS as an intern, while he was still an
4 undergraduate at the University of California, Berkeley. When he graduated in 1994,
5 respondent joined the INS as an immigration inspector. He was assigned to the San Francisco
6 International Airport for the term of his employment with the INS.
7

8 6. Between 1996 and 2000, respondent made several trips to the
9 Philippines. On one of those trips, respondent was introduced to Ramon Arenas. While
10 respondent was on a trip to the Philippines in February 2000, Arenas offered respondent
11 \$100,000 in exchange for INS rubber stamps and special ink. In return, respondent also
12 promised to affix official stamps on passports of two Philippine residents so that those
13 individuals could enter the United States. Unbeknownst to respondent, in early 2000, after
14 respondent agreed to engage in the criminal conduct but before the delivery date for the stolen
15 government property, someone informed officials and a "sting operation" was set up to catch
16 respondent in the criminal acts he had planned. While at the Fairmont Hotel in San Francisco,
17 respondent was filmed as he acted to complete the exchange of the stolen stamps and ink.
18 Respondent had already received a down payment of \$7,500, and on the day of the exchange,
19 he was to receive another \$10,000 in cash. Respondent was arrested on March 29, 2000, at the
20 time of the exchange. All of the funds received by respondent were returned to the government
21 soon after his arrest. He pled guilty without the benefit of a plea bargain or reduction of the
22 filed charges.
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1 *Prior Administrative Proceedings*

2 7. Respondent's pending application for licensure as a real estate
3 salesperson is the fourth application that he has filed with the Department. Respondent first
4 applied for a real estate salesperson license in December 2001. He withdrew that application
5 after meeting with Department staff who advised him that because he was still on criminal
6 probation that his application would almost certainly be denied. Respondent has had two
7 license applications denied after administrative hearings. The first denial was in February 2006,
8 and the second denial was in January 2009. Both denials were based on determinations that
9 respondent had been convicted of crimes substantially related to the duties, qualifications, and
10 functions of a real estate salesperson and that he was not sufficiently rehabilitated.
11

12 *Respondent's Evidence*

13 8. Respondent testified that he is 38 years old; was an honor student in high
14 school and at U C Berkeley; graduated from U C Berkeley in 1994 with a bachelor's degree in
15 Spanish Literature; is single; has no children; has helped to support his mother for many
16 years; has provided nearly full support for her since June 2010; and that he owns three
17 condominium units in San Francisco.
18

19 9. Respondent testified that, after graduation from U C Berkeley, he was
20 hired as an immigration inspector by the INS; he was assigned to the San Francisco
21 International Airport; and resigned from the INS following his arrest in March 2010.
22

23 10. Respondent testified that, in November 2000, he was hired by McGuire
24 Real Estate, a prestigious real estate firm in San Francisco; he worked at first as a comparative
25 market analyst, primarily performing market research; that at the time of his hire, he did not
26 disclose the fact that he had been arrested and that felony criminal charges were pending
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1 against him in the United States District Court. Respondent acknowledged at the administrative
2 hearing that until his real estate license application was denied in 2009, he failed to understand
3 that this conduct was reprehensible, and testified that he now understands that he had a moral
4 obligation to reveal the pending charges to his prospective employer, and that he should have
5 done so. Respondent testified that, after he was convicted, he revealed the fact of the conviction
6 to the firm.

7
8 11. Respondent began serving his prison term in May 2001. He served two
9 months in prison, and then was transferred to Cornell Corrections, a halfway house in the
10 Tenderloin neighborhood of San Francisco. Respondent testified that, in twice-weekly
11 meetings with a counselor, and at weekly group meetings, he gained insight and understanding;
12 that he was allowed to leave the program during the day for work, and continued to work at
13 McGuire Real Estate during this time; that because of good behavior, he was released from
14 Cornell Corrections two months early, and was allowed to continue his confinement at home
15 while wearing an ankle monitor. On June 15, 2004, following the recommendation of his
16 probation officer, the District Court granted respondent an early termination of his probation.
17 Respondent has not sought to expunge the convictions because he has been advised that there is
18 no provision for expungement in the federal law.
19

20
21 12. Respondent testified that, in 2002, after he was released from custody, he
22 was offered a job as executive assistant to Barbara Callan, a licensed salesperson and partner at
23 McGuire Real Estate. Respondent testified that, before he was hired, he informed Ms. Callan
24 of his convictions. He testified that, as Ms. Callan's executive assistant, he manages her
25 marketing efforts by writing agent's brochures, newsletter and other mailings; that he also
26 maintains her office, does filing, interacts with vendors to support home staging and sales, and
27

1 assists at real estate "open house" showings. Respondent testified that he also launched a
2 website for Ms. Callan and Robert Callan, Jr., her son who is also an agent at McGuire Real
3 Estate; and has been Ms. Callan's executive assistant for nine and a half years, and is highly
4 regarded by Ms. Callan, by Robert Callan, Jr., and by Charles Moore, the owner/broker of
5 McGuire Real Estate.

6
7 13. Respondent testified that he is passionate about his work; if he is
8 successful in his effort to obtain a license, he does not intend to work as an agent in the
9 immediate future; but would continue to work under Barbara Callan and Robert Callan, Jr., as
10 their assistant, and as a licensee, could expand his responsibilities in that job.

11 14. At the hearing, respondent admitted that he committed the crimes for
12 "pure greed" and that he was seduced by the "lure of big money." Respondent did not admit
13 this at his prior administrative hearings. Respondent testified that it has been hard for him to
14 acknowledge his motivation for committing the crimes; is genuinely remorseful for his
15 criminal conduct; is ashamed of his grievous criminal acts; recognizes the impact his conduct
16 has had on his family, who he testified were deeply hurt by his apparent waste of his
17 educational and career opportunities that he worked so hard to achieve; that he betrayed his
18 obligation to protect the security of the INS; and that he now realizes that at the time he
19 committed the crimes that he did not think about who could have gotten into the country as a
20 result of what he planned to do. Respondent's crimes were committed before September 11,
21 2001, and respondent testified that in hindsight, he now recognizes the potentially terrible
22 consequences of his actions; and that he is sincerely remorseful, and has worked hard the last
23 nine years to prove that he is worthy of a second chance.
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1 15. More than 10 years have passed since respondent's convictions, and
2 seven years have elapsed since respondent's probation ended. Respondent testified that, in that
3 time, he has earned the respect and admiration of numerous persons in the community who
4 have provided written testimonials on Barbara Callan's website expressing appreciation and
5 recognition of the excellent work performed by respondent in aiding Ms Callan in closing real
6 estate transactions in San Francisco.¹ Respondent testified that San Francisco Mayor Gavin
7 Newsom proclaimed October 24, 2010, "David Ayerdi Day" in recognition of respondent's
8 "significant and remarkable contributions to the vitality" of San Francisco.
9

10 16. Respondent testified that he has been actively involved in a number of
11 community and charitable organizations and fundraisers for many years, including 10 years
12 with a fundraiser for the Cancer Prevention Institute of California, and the "PlumpJack/LINK"
13 Golf Classic, which is a golf tournament, dinner and auction for approximately 350 people.
14 Respondent testified that he works year round on this fundraiser that has raised over 2.5 million
15 dollars for breast cancer research and education; for the past seven years, he has worked for the
16 Child Abuse Prevention Center through his coordination of the annual "Trunk Show" at the
17 home of Anne and Gordon Getty in San Francisco; for several years, he has also worked on the
18 Project for the Beautification of Islands in his own neighborhood, and for the San Francisco
19 Parks Trust, where he testified that he works with high school youth to garden and beautify
20 neighborhoods in San Francisco; and that he works about 10 hours a month with students in
21 this project.
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25 ¹ Testimonials on the website were written by more than 50 persons over the last six years, including San Francisco Mayor Gavin Newsom,
26 financier and philanthropist Warren E. Buffett, and San Francisco Giants infielder Rich Aurilia.
27

1 17. Barbara Callan testified on respondent's behalf. She testified that she has
2 been a licensed real estate salesperson since 1986, and is a partner at McGuire Real Estate in
3 San Francisco, where she has worked since 1993. She testified that she has known respondent
4 since he began working at McGuire in 2000, although she did not know of his convictions until
5 shortly before he began to work for her as her executive assistant. Respondent testified that he
6 told Ms. Callan of the convictions before he took the job, but she hired him anyway because
7 she had observed him to be a "person of integrity and honesty" who made a mistake and
8 wanted to move forward. Respondent testified that he still works for Ms. Callan as her
9 executive assistant, in which capacity he does paperwork and manages and coordinates her
10 files, and assists in opening up and providing security for "open houses" that Ms. Callan holds
11 for clients who are selling their homes. Ms. Callan corroborated respondent's testimony that he
12 launched a website for her and her son; that he is in a position of trust and handles confidential
13 matters for her and her clients; that he has never violated that trust; that in her opinion,
14 respondent is trustworthy, honest, thorough, detail-oriented, and has a strong work ethic; and
15 that she has received very positive feedback from clients, agents and brokers who also
16 commend respondent's work.

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18
19 Ms. Callan testified that she is also familiar with respondent's volunteer work for
20 various charities in the community.

21
22 Ms. Callan testified that that she works very closely with respondent; that he
23 works at a desk in Ms. Callan's office; that they talk or email "all day" seven days a week; that
24 she unhesitatingly supports respondent's application to be a licensed real estate salesperson; that
25 she is willing to supervise respondent if he is granted a restricted license; that her son,
26 Robert Callan, Jr., is also willing to supervise him; and that Charles Moore, the owner/broker of
27

1 McGuire Real Estate would be the supervising broker. Charles Moore, who would be the person
2 legally responsible for supervising the licensed acts of respondent, did not testify or provide a
3 letter of recommendation supporting respondent.

4 18. Ingrid Ayerdi is respondent's older sister. She testified of respondent's
5 good character, and family dedication; that she has observed the significant impact that the
6 convictions have had on respondent, and the depth of his shame and his sincere remorse. Ms.
7 Ayerdi corroborated that respondent is a dutiful son who provides monthly support for their
8 mother. In addition, respondent's mother and two sisters together wrote a letter describing
9 respondent's help to the family, strong community involvement, dedication to his job and desire
10 to pursue a career in real estate. The testimony of respondent's family members reveal that they
11 were "deeply hurt by his apparent waste of his educational and career opportunities that he
12 worked so hard to achieve", but no mention was made of their opinion of his gross dishonesty
13 and malfeasance in public service.

16 19. Respondent also offered the testimony of Robert Callan, Jr., in the form of
17 a transcript of Mr. Callan's testimony from respondent's June 2008 administrative hearing. Mr.
18 Callan was unable to attend the current administrative hearing, and there was no objection to the
19 use of the transcript in lieu of his testimony. Robert Callan, Jr. states that he is a licensed real
20 estate salesperson, and the son of Barbara and Robert Callan; that he has worked at McGuire
21 Real Estate since 2005; that he has known respondent since late 2000; that he has knowledge of
22 respondent's convictions; that he has high regard for respondent, whom he sees as having great
23 potential and aptitude to become an outstanding real estate salesperson.

25 20. Respondent provided letters of support, which were considered as
26 hearsay under Government Code section 11513(d). These included letters from Barbara Callan,
27

1 and Ingrid Ayerdi, who both testified at the administrative hearing. Robert R. Callan, Sr., an
2 attorney, real estate broker, and Barbara Callan's husband, wrote that he has known respondent
3 for eight years. He believes that Respondent has the moral, ethical and intellectual requirements
4 of a licensee, that he has paid his debt to society, and should be granted a license.

5 21. It is noteworthy that all of the witnesses who testified and/or wrote
6 letters of support for respondent failed to mention why respondent's conviction of three serious
7 felonies in total disregard of his trusted position as a public official have had absolutely no
8 impact on their opinion of respondent as an honest and trustworthy person. On its face,
9 respondent's rehabilitation appears to be significant, and he has had no negative contact with
10 the law for more than 11 years, seven of which have been since the early termination of his
11 probation. In past administrative proceedings, respondent failed to articulate the reasons for his
12 criminal conduct, and to acknowledge the seriousness of his failure to reveal the pending
13 charges to his prospective employer. In addition, it was not until his real estate license
14 application was denied for the second time in 2009, that respondent claims that he finally
15 understood that this conduct was reprehensible. Why it took respondent nine years to realize
16 how serious his crimes were, notwithstanding two months in prison, eight more months on
17 work-furlough, two more months wearing an ankle bracelet, more than two additional years of
18 criminal probation, and the loss of his employment, is just as likely the result of his eventual
19 understanding that, without such realization, his application for a real estate license may never
20 be granted.
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24 Notwithstanding that respondent has acknowledged the seriousness of his
25 crimes in the present administrative hearing; that he admitted that he acted from pure greed in
26 engaging in the criminal conduct; that he admitted that he failed in his moral obligation to
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1 2910 (a)(4), and the commission of an unlawful act with the intent of conferring a financial or
2 economic benefit on oneself - 2910 (a)(8).

3 4. The conduct underlying respondent's convictions (Factual Findings 3
4 through 6) constituted the fraudulent taking, obtaining, appropriating or retaining of funds or
5 property belonging to another, the employment of bribery, fraud, deceit, falsehood or
6 misrepresentation, and the doing of an unlawful act with the intent of conferring a financial or
7 economic benefit upon himself. His convictions are therefore substantially related to the
8 qualifications, functions, and duties of a real estate salesperson under California Code of
9 Regulations, title 10, section 2910 (a)(1), (a)(4), and (a)(8).

10
11 *Cause for Discipline*

12 5. By reason of Factual Findings 3 through 6, cause is established to deny
13 respondent's application for a real estate salesperson license for his convictions, pursuant to
14 Business and Professions Code sections 480 (a) and 10177 (b), and California Code of
15 Regulations, title 10, section 2910, subdivision (a)(1), (a)(4), and (a)(8).

16
17 6. By reason of Factual Finding 7, cause is established to deny respondent's
18 application for a real estate salesperson license for his prior administrative discipline, pursuant
19 to Business and Professions Code section 10177 (f).

20
21 *Rehabilitation*

22 1. In California Code of Regulations, title 10, section 2911, the Department
23 has established criteria by which to evaluate the rehabilitation of an applicant for a real estate
24 salesperson license.

25 2. In applying those criteria, evidence has been presented that respondent
26 has demonstrated a sustained commitment to his rehabilitation since 2001. He has successfully
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1 completed and achieved an early termination of his probation. He testified that he has had a
2 sustained involvement in many charitable works to support cancer research and prevention, to
3 prevent child abuse, and to beautify his community; and that he has the respect of his employer,
4 his employer's clients, persons in the community, and other real estate professionals. He has
5 strong and stable family ties. He testified to his personal growth and insight into his criminal
6 behavior by acknowledging his personal greed and self-interest at the time he committed these
7 serious crimes 11 years ago. He testified to his change in attitude from that which existed at the
8 time of his convictions, and at the time of earlier administrative hearings. Respondent
9 presented evidence of others familiar with his previous conduct, who attested to his changed
10 attitude and behavior. He testified that he accepts responsibility for his wrongdoing and is
11 sincerely remorseful for his past misconduct. However, his change of attitude concerning an
12 appreciation of the seriousness of his acts which led to his three felony convictions did not
13 apparently come about until 2009, and not from the time of his convictions.

16 3. Respondent offered significant evidence of rehabilitation. However,
17 given the serious nature of respondent's convictions; the fact that respondent's convictions
18 involved fraud and theft, while acting in his official capacity as a guardian of the borders of this
19 country, in violation of his official duties and his oath of office; and his relatively recent
20 appreciation of the seriousness of his acts, respondent's application for a real estate
21 salesperson license must be denied, however, it is determined that granting respondent the right
22 to apply for, and receive, a restricted real estate salesperson license, on the following terms and
23 conditions, would not be contrary to the public interest.

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ORDER

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2 The application of DAVID STEVEN AYERDI for a real estate salesperson
3 license is denied; provided, however, a restricted real estate salesperson license shall be issued to
4 respondent pursuant to 10156.5 of the Business and Professions Code. The restricted license
5 issued to the respondent shall be subject to all of the provisions of Section 10156.7 of the
6 Business and Professions Code and to the following limitations, conditions and restrictions
7 imposed under authority of Section 10156.6 of said Code:
8

9 1. The license shall not confer any property right in the privileges to be exercised, and the Real
10 Estate Commissioner may by appropriate order suspend the right to exercise any privileges
11 granted under this restricted license in the event of:

12 (a) The conviction of respondent (including a plea of nolo contendere) of a crime which is
13 substantially related to respondent's fitness or capacity as a real estate licensee; or

14 (b) The receipt of evidence that respondent has violated provisions of the California Real
15 Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or
16 conditions attaching to this restricted license.
17

18 2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license
19 nor the removal of any of the conditions, limitations or restrictions attaching to the restricted
20 license until four years have elapsed from the date of issuance of the restricted license to
21 respondent.
22

23 3. With the application for license, or with the application for transfer to a new employing
24 broker, respondent shall submit a statement signed by the prospective employing real estate
25 broker on a form (RE 552 Rev. 4/88) approved by the Department of Real Estate which shall
26 certify as follows:
27

1 (a) That the employing broker has read the Decision which is the basis for the issuance of
2 the restricted license; and

3 -(b) That the employing broker will carefully review all transaction documents prepared by
4 the restricted licensee and otherwise exercise close supervision over the licensee's performance
5 of acts for which a license is required.

6 4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending
7 a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000,
8 Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime
9 for which respondent was arrested and the name and address of the arresting law enforcement
10 agency. Respondent's failure to timely file written notice shall constitute an independent violation
11 of the terms of the restricted license and shall be grounds for the suspension or revocation of that
12 license.

13 5. Respondent shall not be the signatory on any real estate broker trust account during the term
14 of restriction imposed herein.

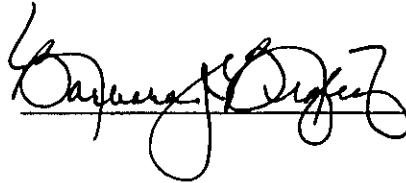
15 6. Respondent shall report in writing to the Department as the Commissioner shall direct by
16 the Decision herein or by separate written order issued while the restricted license is in
17 effect such information concerning respondent's activities for which a real estate license is
18 required as the Commissioner shall deem appropriate to protect the public interest. Such
19 reports may include, but shall not be limited to, periodic summaries of salient information
20 concerning each real estate transactions in which respondent engaged during the period
21 covered by the report. Such reports shall include a listing all of respondent's transactions,
22 and the fees paid to respondent for his work on those transactions.
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This Decision shall become effective at 12 o'clock noon on FEB 14 2012.

IT IS SO ORDERED 1/25, 2012.

BARBARA J. BIGBY
Acting Real Estate Commissioner



Handwritten signature of Barbara J. Bigby, Acting Real Estate Commissioner, written over a horizontal line.

FILED

SEP 21 2011

DEPARTMENT OF REAL ESTATE

By *S. Jones*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of

DAVID STEVEN AYERDI,

Respondent.

No. H-11083 SF
OAH No. L-2011040307

NOTICE

TO: DAVID STEVEN AYERDI, Respondent, and EDGARDO GONZALEZ, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 12, 2011, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 12, 2011, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 14, 2011, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 14, 2011, at the Sacramento

///

1 office of the Department of Real Estate unless an extension of the time is granted for good cause
2 shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Sacramento office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 9/20/11

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8 BARBARA J. BIGBY
9 Acting Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DAVID STEVEN AYERDI,

Respondent.

Case No. H-11083 SF

OAH No. 2011040307

PROPOSED DECISION

Administrative Law Judge Hannah H. Rose, State of California, Office of Administrative Hearings, heard this matter on July 14, 2011 in Oakland, California.

Richard K. Uno, Counsel, Department of Real Estate (Department), represented E. J. Haberer, II (complainant), a Deputy Real Estate Commissioner for the Department.

Edgardo Gonzalez, Attorney at Law, represented David Steven Ayerdi (respondent) who was also present.

The matter was submitted on July 14, 2011.

SUMMARY

This is respondent's third appeal of a denial of his application for a license as a real estate salesperson. In 2001, respondent was convicted of serious felonies involving fraud and theft in connection with his employment as an immigration inspector with the United States Immigration and Naturalization Service. Since then, respondent has worked hard to rehabilitate himself. The first two times that he applied for, and was denied, a real estate salesperson license, he did not demonstrate an understanding of, and sincerely accept full responsibility for, his criminal behavior. Respondent has now demonstrated the necessary understanding of his behavior in order to achieve meaningful rehabilitation. He has lived a law-abiding and responsible lifestyle since 2001. However, given the serious nature of the violations, the protection of the public requires that respondent may only be issued a restricted license, with conditions, at this time.

FACTUAL FINDINGS

1. ~~Complainant made and filed the Statement of Issues in his official capacity.~~

2. On March 1, 2010, the Department of Real Estate (Department) received respondent's application for a real estate salesperson license. Pursuant to the Statement of Issues, complainant requests that respondent's application be denied based upon respondent's three felony convictions and two prior administrative decisions, described in Findings 3 through 7 below.

Respondent's Convictions

3. On May 24, 2001, in the United States District Court, Northern District of California, in Case Number CR-00-0247 MMC, respondent, on a plea of guilty, was convicted of violating 18 United States Code (U.S.C.) section 201(b)(2)(B) (Bribery of a Public Official/Employee), 18 U.S.C. section 1546(a) (Visa Fraud), and 18 U.S.C. section 641 (Theft of Public Property), all felonies. Respondent was committed to the custody of the United States Bureau of Prisons for imprisonment for a term of 12 months and one day on all counts to run concurrently. After two months in prison, the court recommended that respondent be placed in a "community confinement facility" to complete the term of imprisonment. Respondent was placed on 36 months of supervised release (probation) following his release from custody, and was ordered to pay a special assessment of \$300. Respondent paid the assessment, and after 24 months of probation, respondent obtained an early termination of probation in 2004.

4. The circumstances underlying respondent's convictions are described in the indictment issued by the grand jury in respondent's case. In pertinent part, the indictment states:

On or about March 27, 2000, through March 29, 2000, in the Northern District of California . . . [respondent], an immigration inspector of the United States Immigration and Naturalization Service (INS), a public official, did corruptly accept and agree to accept personally a thing of value from another in return for being influenced to collude in and allow a fraud . . . on the United States by providing INS stamps, ink, and other material to assist in the fraudulent manufacturing and use of false entry and visa documents On or about March 29, 2000 . . . [respondent] did knowingly attempt to use . . . falsely made visas, alien registration receipt cards, and entry documents [And on] or about March 29, 2000 . . . [respondent] did knowingly and intentionally embezzle, steal, purloin and convert to his own use and the use of another, property of the United States of a value greater than \$1,000, namely stamps,

ink, and information, useful to manufacture fraudulent visas and other entry documents

5. The convictions arose out of respondent's employment with the INS. In 1992, respondent started employment with the INS as an intern, while he was still an undergraduate at the University of California, Berkeley (Berkeley). When he graduated in 1994, respondent joined the INS as an immigration inspector. He was assigned to the San Francisco International Airport for the term of his employment with the INS.

6. Between 1996 and 2000, respondent made several trips to the Philippines. On one of those trips, respondent was introduced to Ramon Arenas. While respondent was on a trip to the Philippines in February 2000, Arenas offered respondent \$100,000 in exchange for INS rubber stamps and special ink. In return, respondent also promised to affix official stamps on passports of two Philippine residents so that those individuals could enter the United States. Unbeknownst to respondent, in early 2000, after respondent agreed to engage in the criminal conduct but before the delivery date for the stolen government property, someone informed officials and a "sting operation" was set up to catch respondent in the criminal acts he had planned. While at the Fairmont Hotel in San Francisco, respondent was filmed as he acted to complete the exchange of the stolen stamps and ink. Respondent had already received a down payment of \$7,500, and on the day of the exchange, he was to receive another \$10,000 in cash. Respondent was arrested on March 29, 2000, at the time of the exchange. All of the funds received by respondent were returned to the government soon after his arrest. He pled guilty without the benefit of a plea bargain or reduction of the filed charges.

Prior Administrative Proceedings

7. Respondent's pending application for licensure as a real estate salesperson is the fourth application that he has filed with the Department. Respondent first applied for a real estate salesperson license in December 2001. He withdrew that application after meeting with Department staff who advised him that because he was still on criminal probation that his application would almost certainly be denied. Respondent has had two license applications denied after administrative hearings. The first denial was in February 2006, and the second denial was in January 2009. Both denials were based upon determinations that respondent had been convicted of crimes substantially related to the license of a real estate salesperson and that he was not sufficiently rehabilitated.

Respondent's Evidence

8. Respondent is 38 years old. He was an honor student in high school and at Berkeley. He graduated from Berkeley in 1994 with a bachelor's degree in Spanish Literature. He is single, and has no children, but he has helped to support his mother for many years, and has provided nearly full support for her since June 2010. Respondent owns three condominium units in San Francisco.

9. After graduation from Berkeley, respondent was hired as an immigration inspector by the INS. He was assigned to the San Francisco International Airport. Respondent resigned from the INS following his arrest in March 2000.

10. In November 2000, respondent was hired by McGuire Real Estate, a prestigious real estate firm in San Francisco. He worked at first as a comparative market analyst, primarily performing market research. At the time of his hire, respondent did not disclose the fact that he had been arrested and that felony criminal charges were pending against him in the United States District Court. Respondent acknowledged at the administrative hearing that until his real estate license application was denied in 2009, he failed to understand that this conduct was reprehensible, and that now he understands that he had a moral obligation to reveal the pending charges to his prospective employer, and that he should have done so. After he was convicted, respondent did reveal the fact of the conviction to the firm.

11. Respondent began serving his prison term in May 2001. He served two months in prison, and then was transferred to Cornell Corrections, a halfway house in the Tenderloin neighborhood of San Francisco. In twice-weekly meetings with a counselor, and at weekly group meetings, respondent gained insight and understanding. Respondent was allowed to leave the program during the day for work, and he continued to work at McGuire Real Estate during this time. Because of good behavior, respondent was released from Cornell Corrections two months early, and he was allowed to continue his confinement at home while wearing an ankle monitor. On June 15, 2004, following the recommendation of his probation officer, the District Court granted respondent an early termination of his probation. Respondent has not sought to expunge the convictions because he has been advised that there is no provision for expungement in the federal law.

12. In 2002, after respondent was released from custody, he was offered a job as executive assistant to Barbara Callan, a licensed salesperson and partner at McGuire Real Estate. Before he was hired, respondent informed Ms. Callan of his convictions. As Ms. Callan's executive assistant, respondent manages her marketing efforts by writing agent's brochures, newsletter and other mailings. He also maintains her office, does filing, interacts with vendors to support home staging and sales, and assists at real estate "open house" showings. Respondent also launched a website for Ms. Callan and Robert Callan, Jr., her son who is also an agent at McGuire Real Estate. Respondent has been Ms. Callan's executive assistant for nine and a half years, and he is highly regarded by Ms. Callan, by Robert Callan, Jr., and by Charles Moore, the owner/broker of McGuire Real Estate.

13. Respondent is passionate about his work. If he is successful in his effort to obtain a license, respondent does not intend to work as an agent in the immediate future. He would continue to work under Barbara Callan and Robert Callan, Jr., as their assistant, and as a licensee, he could expand his responsibilities in that job.

14. At the hearing, respondent admitted that he committed the crimes for "pure greed" and that he was seduced by the "lure of big money." Respondent was not able to

admit this at his prior administrative hearings, and it has been hard for him to acknowledge his motivation for committing the crimes. He is genuinely remorseful for his criminal conduct. He is ashamed of his grievous criminal acts, and his shame will be with him forever. Respondent also recognizes the impact his conduct has had on his family, who were deeply hurt by his apparent waste of his educational and career opportunities that he worked so hard to achieve. He betrayed his obligation to protect the security of the INS, and he now realizes that at the time he committed the crimes that he did not think about who could have gotten into the country as a result of what he planned to do. His crimes were committed before September 11, 2001, and in hindsight, respondent now recognizes that potentially terrible consequences of his actions. He is sincerely remorseful, and has worked hard the last nine years to prove that he is worthy of a second chance.

15. More than 10 years have passed since respondent's convictions, and seven years have elapsed since respondent's probation ended. In that time, respondent has earned the respect and admiration of numerous persons in the community who have provided written testimonials on Barbara Callan's website expressing appreciation and recognition of the excellent work performed by respondent in aiding Ms. Callan in closing real estate transactions in San Francisco.¹ In a proclamation signed by Mayor Gavin Newsom, the City and County of San Francisco proclaimed October 24, 2010, "David Ayerdi Day" in recognition of respondent's "significant and remarkable contributions to the vitality" of San Francisco.

16. Respondent has been actively involved in a number of community and charitable organizations and fundraisers for many years. For 10 years, respondent has been involved with a fundraiser for the Cancer Prevention Institute of California, the "PlumpJack/LINK" Golf Classic, which is a golf tournament, dinner and auction for approximately 350 people. He works year round on this fundraiser that has raised over 2.5 million dollars for breast cancer research and education. For the past seven years, respondent has worked for the Child Abuse Prevention Center through his coordination of the annual "Trunk Show" at the home of Anne and Gordon Getty in San Francisco. For several years, respondent has also worked on the Project for the Beautification of Islands in his own neighborhood, and for the San Francisco Parks Trust, where he works with high school youth to garden and beautify neighborhoods in San Francisco. He works about 10 hours a month with students in this project.

17. Barbara Callan testified on respondent's behalf. She has been a licensed real estate salesperson since 1986, and she is a partner at McGuire Real Estate in San Francisco, where she has worked since 1993. She has known respondent since he began working at McGuire in 2000, although she did not know of his convictions until shortly before he began to work for her as her executive assistant. Respondent told Ms. Callan of the convictions

¹ Testimonials on the website were written by more than 50 persons over the last six years, including San Francisco Mayor Gavin Newsom, financier and philanthropist Warren E. Buffett, and San Francisco Giants infielder Rich Aurilia.

before he took the job, but she hired him anyway because she had observed him to be a "person of integrity and honesty" who made a mistake and wanted to move forward. Respondent still works for Ms. Callan as her executive assistant, in which capacity he does paperwork and manages and coordinates her files, and assists in opening up and providing security for "open houses" that Ms. Callan holds for clients who are selling their homes. She corroborated that respondent launched a website for her and her son. Respondent is in a position of trust and handles confidential matters for Ms. Callan and her clients. He has never violated that trust. In Ms. Callan's opinion, respondent is trustworthy, honest, thorough, detail-oriented, and has a strong work ethic. She has received very positive feedback from clients, agents and brokers who also commend respondent's work.

Ms. Callan is also familiar with respondent's volunteer work for various charities in the community.

Ms. Callan pointed out that she works very closely with respondent. Respondent works at a desk in Ms. Callan's office, and they talk or email "all day" seven days a week. She unhesitatingly supports respondent's application to be a licensed real estate salesperson. Ms. Callan is willing to supervise respondent if he is granted a restricted license. Her son, Robert Callan, Jr., is also willing to supervise him. Charles Moore, the owner/broker of McGuire Real Estate would be the supervising broker.

18. Ingrid Ayerdi is respondent's older sister. She offered evidence of respondent's good character, and family dedication. She has observed the significant impact that the convictions have had on respondent, the depth of his shame and his sincere remorse. Ms. Ayerdi corroborated that respondent is a dutiful son who provides monthly support for their mother.

19. Respondent also offered the testimony of Robert Callan, Jr., in the form of a transcript of Mr. Callan's testimony from respondent's June 2008 administrative hearing. Mr. Callan was unable to attend the current administrative hearing, and there was no objection to the use of the transcript in lieu of his testimony. Robert Callan, Jr., is a licensed real estate salesperson, and the son of Barbara and Robert Callan. Robert Callan, Jr., has worked at McGuire Real Estate since 2005, but he has known respondent since late 2000. He has knowledge of respondent's convictions, and has high regard for respondent, whom he sees as having great potential and aptitude to become an outstanding real estate salesperson.

20. Respondent provided four letters of support, which were considered to the extent permitted under Government Code section 11513, subdivision (d).² These included letters from Barbara Callan, and Ingrid Ayerdi, who both at the administrative hearing. Respondent's mother and two sisters together wrote a letter describing respondent's help to

² Government Code section 11513, subdivision (d), states in pertinent part, "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ..."

the family, strong community involvement, dedication to his job and desire to pursue a career in real estate. Robert R. Callan, Sr., an attorney, real estate broker, and Barbara Callan's husband, wrote that he has known respondent for eight years. He believes that respondent has the moral, ethical and intellectual requirements of a licensee, that he has paid his debt to society, and that he should be granted a license.

21. Respondent's rehabilitation is significant. Although he was convicted of multiple fraud and theft-related crimes he has had no negative contact with the law for more than 11 years, seven of which have been since the early termination of his probation. While in past administrative proceedings respondent was unable to articulate the reason for his criminal conduct, and to acknowledge the seriousness of his failure to reveal the pending charges to his prospective employer, respondent has done so in the present administrative hearing. He admitted that he acted from pure greed in engaging in the criminal conduct, and also that he failed in his moral obligation to reveal the pending charges when McGuire Real Estate hired him in 2000. Respondent has worked hard for the last 10 years to give back to his community and to rehabilitate himself. In consideration of both the serious nature of the crimes, and respondent's rehabilitation, it would be consistent with the public interest, safety and welfare to issue respondent only a restricted real estate salesperson license at this time.

LEGAL CONCLUSIONS

1. A real estate license may be denied based upon the conviction of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a) and 10177, subd. (b).)
2. A real estate license may be denied based on a prior denial of a license or prior revocation or suspension of a license by the Department or by another state agency. (Bus. & Prof. Code, § 10177, subd. (f).)
3. In the California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. These include crimes that involve the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another (subd. (a)(1)), the employment of bribery, fraud, deceit, falsehood or misrepresentation (subd. (a)(4)), and the commission of an unlawful act with the intent of conferring a financial or economic benefit on oneself (subd. (a)(8)).
4. The conduct underlying respondent's convictions (Factual Findings 3 through 6) constituted the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another, the employment of bribery, fraud, deceit, falsehood or misrepresentation, and the doing of an unlawful act with the intent of conferring a financial or economic benefit upon himself. His convictions are therefore substantially related to the qualifications, functions,

and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(4) and (a)(8).

Cause for Discipline

5. By reason of Factual Findings 3 through 6, cause is established to deny respondent's application for a real estate salesperson license for his convictions, pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a)(1).

6. By reason of Factual Findings 3 through 6, cause is established to deny respondent's application for a real estate salesperson license for his convictions, pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a)(4).

7. By reason of Factual Findings 3 through 6, cause is established to deny respondent's application for a real estate salesperson license for his convictions, pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, subdivision (a) (8).

8. By reason of Factual Finding 7, cause is established to deny respondent's application for a real estate salesperson license for his prior administrative discipline, pursuant to Business and Professions Code section 10177, subdivision (f).

Rehabilitation

1. In California Code of Regulations, title 10, section 2911, the Department has established criteria by which to evaluate the rehabilitation of an applicant for a real estate salesperson license.

2. In applying those criteria, the evidence establishes that respondent has demonstrated a sustained commitment to his rehabilitation since 2001. He has successfully completed and achieved an early termination of his probation. He has had a sustained involvement in many charitable works to support cancer research and prevention, to prevent child abuse, and to beautify his community. Respondent has the respect of his employer, his employer's clients, persons in the community, and other real estate professionals. He has strong and stable family ties. He has demonstrated personal growth and insight into his criminal behavior by acknowledging his personal greed and self-interest at the time he committed these serious crimes 11 years ago. He has demonstrated a change in attitude from that which existed at the time of his convictions, and at the time of earlier administrative hearings. Respondent presented evidence of others familiar with his previous conduct, who attested to his changed attitude and behavior. He accepts responsibility for his wrongdoing and is sincerely remorseful for his past misconduct.

3. Respondent offered significant evidence of rehabilitation. However, given the serious nature of respondent's convictions, and the fact that respondent's convictions involved fraud and were theft-related, restrictions must be imposed on any license issued to respondent in order to insure that the public interest, safety and welfare will be protected.

ORDER

The application of respondent David Steven Ayerdi for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to the respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to respondent.

4. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

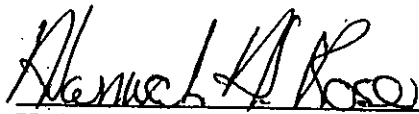
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

Not adopted

Not adopted

5. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: August 12, 2011



HANNAH H. ROSE
Administrative Law Judge
Office of Administrative Hearings

1 RICHARD K. UNO, Counsel (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
5 (916) 227-2380 (Direct)

FILED

MAR 11 2011

DEPARTMENT OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 DAVID STEVEN AYERDI,) No. H-11083 SF
13 Respondent.) STATEMENT OF ISSUES

14
15 The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of
16 the State of California, for Statement of Issues against DAVID STEVEN AYERDI,
17 (Respondent), alleges as follows:

18 1

19 Complainant makes this Statement of Issues in his official capacity.

20 2

21 On or about January 6, 2010, Respondent made application to the Department of
22 Real Estate of the State of California (the Department) for a real estate salesperson license.

23 3

24 On or about May 24, 2001, in the United States District Court, Northern District
25 of California, Case No. CR-00-0247 MML, Respondent was convicted of a violating 18 USC
26 201(b)(2)(B) (Bribery of Public Official/Employee), 18 USC 1546(a) (Visa Fraud) and 18 USC
27 641 (Theft of Public Property), all felonies and crimes which bear a substantial relationship

1 under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions or
2 duties of a real estate licensee.

3 4

4 Respondent's criminal convictions, as described in Paragraph 3, above, constitute
5 cause for denial of his application for a real estate license under Sections 10177(b) (Further
6 Grounds for Disciplinary Action- Conviction of Crime) and 480(a) (Conviction of Crime) of the
7 Code.

8 5


9 PRIOR ADMINISTRATIVE PROCEEDINGS

10 Effective February 28, 2006, in Case No. H-9310 SF, before the Department, the
11 Real Estate Commissioner denied Respondent's application for a real estate salesperson license
12 pursuant to Sections 480(a) and 10177(b) of the Code.

13 6

14 Effective January 7, 2009, in Case No. H-10389 SF, before the Department, the
15 Real Estate Commissioner denied Respondent's application for a real estate salesperson license
16 pursuant to Sections 480(a) and 10177(b) of the Code.

17 WHEREFORE, Complainant prays that the above-entitled matter be set for
18 hearing and, upon proof of the charges contained herein, that the Commissioner refuse to
19 authorize the issuance of, and deny the issuance of a real estate salesperson license to
20 Respondent, and for such other and further relief as may be proper in the premises.

21
22 
23 E. J. HABERER, II
24 Deputy Real Estate Commissioner

25 Dated at Oakland, California,
26 this 10th day of March, 2011.
27